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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,051	03/14/2002	Ivan Stangei	7374/72586	9038

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FITCH, EVEN, TABIN & FLANNERY
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EXAMINER

SZEKELY, PETER A

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/074,051	STANGEL ET AL.	
	Examiner	Art Unit	
	Peter Szekely	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3/14/02. 6) ☐ Other:

DETAILED ACTION

Priority

1. If applicant desires priority under 35 U.S.C. 120 or 119 based upon a previously filed application, specific reference to the earlier filed application must be made in the instant application. For benefit claims under 35 U.S.C. 120, 121 or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of the applications. This should appear as the first sentence of the specification following the title, preferably as a separate paragraph unless it appears in an application data sheet. The status of nonprovisional parent application(s) (whether patented or abandoned) should also be included. If a parent application has become a patent, the expression "now Patent No. ____" should follow the filing date of the parent application. If a parent application has become abandoned, the expression "now abandoned" should follow the filing date of the parent application.

Specification

2. The disclosure is objected to because of the following: Spelling errors have to be corrected on page 2, line 5, on page 11, lines 8, 10 (2) and 12 and on page 16, lines 10 and 11. There are unnecessary brackets on page 9, lines 14-15 and on page 14, lines 18-19. Between lines 14 and 15, on page 18, several lines of text are missing. See parent.

Appropriate correction is required.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 55-60 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of U.S. Patent No. 6,605,651. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent is a species for the genus of the instant application. Claims 41-62 have been renumbered to claims 39-60 as per Rule 27.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 39-54 and 59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. The phrase "optionally other additives" includes everything under the sun including coffee, tea or milk. Claim 59 depends from cancelled claim 20. Claim 39, part (c), contains improper Markush language.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

9. Claims 39-44, 48-56 and 58-59 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Guzauskas 6,103,779, Guzauskas 5,747,553 or Gorlich et al. 6,335,385, in view of Nakazato 4,873,269 or Rheinberger et al. 6,287,490.

10. Guzauskas ('779) disclose methacrylate monomers, fillers, initiators (t-butyl peroxybenzoate) and curing agents in Examples 5-8 and from column 13, line 7 to column 14, line 33, more initiators in claim 3, EGDMA, TEGDMA and UEDMA in column 6, lines 10-17, fillers in the paragraph overlapping columns 6 and 7, coupling agents, accelerators, catalysts and plasticizers in column 7, lines 25-38. For initiator concentrations, see column 14, lines 48-52 and fumed silica has the claimed particle

size (column 16, lines 65-67). Dental products are listed in column 18, lines 21-25. Gorlich et al. teach making a dental prosthesis by microwave radiation in claim 1, plasticizers in claim 2, dental products in claim 11, methacrylate monomers in claim 12, fillers with particle sizes in claims 27-28, bis-GMA, triethyleneglycol dimethacrylate, urethane dimethacrylates and methacrylate monomers in column 7, lines 21-54, silaned fillers in column 8, lines 10 and 11 and 3-methacryloyloxypropyltrimethoxy silane in column 8, lines 24-25. Accelerators are mentioned in column 3, line 53, while t-butyl perbenzoate can be found in column 8, line 45. Nakazato recites a microwavable composition for denture base, comprising methacrylate ester polymer, barbuturic acid derivative, organic peroxide and quarternary ammonium chloride in claim 1. For individual peroxides, fillers (colorants) and ethylene glycol dimethacrylate, see column 7, lines 13-63. Rheinberger et al. reveal dental products in claim 1, methacrylate resins in claim 14, bis-GMA, triethyleneglycol dimethacrylate and urethane dimethacrylate in claim 15, silica and catalysts in claim 17, microwave curing in column 5, lines 56-57, dibenzoyl peroxide, t-butyl perbenzoate and dilauroyl peroxide in column 5, lines 58-60 and amine accelerators in column 5, line 67. Applicants' claims are not novel. In the alternative, it would have been obvious to one, having ordinary skill in the art, at the time the invention was made, to add the curing agent of Nakazato to the composition of the primary references, in order to insure the rapid and thorough polymerization of the compositions and use the amine accelerators of Rheinberger et al. as accelerators, since they are the most frequently used ones.

11. Claims 39, 45, 46 and 54 are rejected under 35 U.S.C. 102(b or e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lai 5,081,164 or Liu 6,384,107, in view of Lee 4,011,197.

12. Lai divulges polysiloxanes making up a dental composite in claim 1, fillers, including fumed silica, in claim 24 and crosslinking agents in column 5, lines 37-53. Liu displays an artificial tooth composed of polysiloxanes in claims 1-15, crosslinking agents in the paragraph overlapping columns 8 and 9 and fillers in column 13, lines 43-63. Applicants' claims are not novel. In the alternative, the Abstract of Lee shows that polysiloxanes can be cured by microwave radiation, proving that silicone polymers are microwave curable.

13. Claims 39, 45, 47 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by May et al. 4,251,215 or Gettleman et al. 4,543,379.

14. May et al. present a prosthetic dental fixture comprising applicants' phosphonitric fluoroelastomer in claims 1-9, crosslinking in column 4, lines 10-14 and iron oxide and titanium dioxide in column 3, line 68. Gettleman et al. relate the same phosphonitric fluoroelastomer and a crosslinking agent in claim 1 and fillers, among them fumed silica in claim 7. Applicants' claims are not novel.

15. Seghatol et al. 6,441,354 is enclosed as being of interest.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is (703) 308-2460. The examiner can normally be reached on 7:00 a.m.-5:30 p.m. Tuesday-Friday.

Application/Control Number: 10/074,051
Art Unit: 1714

Page 7

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (703) 306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to read 'Peter Szekely', with a stylized, cursive script.

Peter Szekely
Primary Examiner
Art Unit 1714

P.S.
10/16/03